

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

WILLARD E. BARTEL, Adm'r for	:	CONSOLIDATED UNDER
JAMES T. MCQUEEN, Deceased,	:	MDL 875
	:	
Plaintiff,	:	
	:	
v.	:	
	:	
CHARLES KURZ & COMPANY INC.,	:	
et al.,	:	
	:	E.D. Pa. Civil Action No.
Defendants.	:	2:11-cv-30511-ER

O R D E R

AND NOW, this **22nd** day of **June, 2015**, upon consideration of Defendants' Motion for Summary Judgment (Judicial Estoppel) (ECF No. 91), and for the reasons set forth in the accompanying memorandum, it is hereby **ORDERED** that the motion is **DENIED in part** and **DENIED without prejudice in part**, as follows:

- (1) The motion is **DENIED** as to the arguments related to judicial estoppel; and
- (2) The motion is **DENIED without prejudice** as to the arguments related to the real party in interest/standing.

It is **FURTHER ORDERED**, in accordance with the accompanying memorandum, as follows:

- (1) The Clerk of this Court shall (a) make a copy of

this order and the accompanying memorandum and file said copy on the docket of Mr. McQueen's bankruptcy case in the Bankruptcy Court for the Middle District of Florida (No. 3:05-bk-14830-JAF); (b) ascertain the identity of the trustee; and (c) serve a copy of said order and memorandum upon the trustee at his/her last known address;

(2) The trustee will have sixty (60) days from the date of the filing of the memorandum and order on the docket of the Bankruptcy Court to provide a signed letter to this Court certifying his/her intention to petition the Bankruptcy Court to reopen Mr. McQueen's bankruptcy proceedings and move in this Court to be substituted as party-plaintiff in the instant case;

(3) In the event that the trustee fails to advise this Court within the sixty (60) day timeframe that he/she intends to proceed with the instant claims, or if he/she declines to do so, the Court will give Plaintiff an additional thirty (30) days¹ to provide this Court with notice that it

¹ Ninety (90) days from the date the memorandum and order are filed on the Bankruptcy Court's docket.

intends to petition the Bankruptcy Court for the Middle District of Florida to reopen the bankruptcy proceedings and move in that court to compel abandonment of the instant claims.

AND IT IS SO ORDERED.

/s/ Eduardo C. Robreno
EDUARDO C. ROBRENO, J.